IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DONALD IME MACAULEY, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12689 Trial Court No. 3AN-16-03294 CR SUMMARY DISPOSITION No. 0087 — October 30, 2019

Appeal from the District Court, Third Judicial District, Anchorage, Gregory Motyka, Judge.

Appearances: David T. McGee, Attorney at Law, under contract with the Public Defender Agency, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Laura Dulic, Assistant District Attorney, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Suddock, Senior Superior Court Judge.*

Donald Ime Macauley was charged with two counts of fourth-degree assault for assaulting his girlfriend Haiyang Austin.[1] When Austin testified at Macauley's jury trial, she generally professed a lack of memory regarding what had

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

[1] AS 11.41.230(a)(1).

occurred. Hearing this, the district court allowed Austin's prior recorded statement to the police into evidence as a prior inconsistent statement.[2]

The jury convicted Macauley of one count of fourth-degree assault. He now appeals, arguing that the State failed to lay an adequate foundation for admission of Austin's recorded statement, because the State did not confront her with each and every assertion in the statement to afford her an opportunity to explain or deny each assertion.

We find no merit to Macauley's claim. Austin's repeated denial of significant details of the assault sufficiently revealed that further attempts by the prosecutor to pry the facts of the assault from her would be useless.[3] Austin's actual or feigned near-total lack of memory constituted an adequate foundation for admission of her recorded statement to the police as a prior inconsistent statement.[4] We find no abuse of discretion.

Macauley also challenges the sentence imposed by the trial court — 360 days with 300 days suspended (60 days to serve) and 3 years of probation. Macauley argues that the judge did not explicitly reference the *Chaney* sentencing criteria during

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[2] *See* Alaska Evid. R. 801(d)(1)(A).

[3] *See Active v. State*, 153 P.3d 355, 364 (Alaska App. 2007) (holding that when a recanting witness repeatedly denies assertions made in a prior interview, the prosecution need not lay a foundation as to each remaining assertion in the interview).

[4] *See Wassillie v. State*, 57 P.3d 719, 723 (Alaska App. 2002) (holding that a witness's actual or feigned lack of memory of the substance of a prior statement satisfies the inconsistency requirement of Evidence Rule 801(d)(1)(A)).

his sentencing remarks, that this defeats meaningful review of Macauley's sentence, and that we should therefore remand the case for resentencing.[5]

Macauley is correct that the judge did not explicitly refer to the *Chaney* sentencing criteria. But even though the better practice is for a judge to explicitly explain their prioritization of the *Chaney* factors, failure to do so does not require a remand for resentencing as long as the record is clear that the judge has actually considered those factors.[6] As we stated in *Smith v. State*, "While the sentencing goals of *Chaney* must be considered in each case, it is only instances where the court's remarks afford no insight to its reasons for sentencing or where they affirmatively indicate that its sentence was not properly grounded on the *Chaney* goals that failure to address the goals expressly will require a remand."[7]

Here, Macauley's defense attorney and the prosecutor both discussed the *Chaney* factors in their sentencing arguments. The judge in turn discussed Macauley's prior criminal history, including the fact that Macauley committed this offense while he was still on probation for a prior conviction. The structure of the sentence imposed by the judge — 360 days with 300 days suspended, and 3 years of probation — left significant suspended time hanging over Macauley's head, and clearly reflected the judge's consideration of the need for individual deterrence. And the judge's rejection of the prosecutor's recommended sentence, coupled with the judge's requirement that Macauley complete a domestic violence batterer's intervention program (with credit for the program's fees against a thousand dollar fine) signaled a recognition of Macauley's

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[5] *See State v. Chaney*, 477 P.2d 411 (Alaska 1970).

[6] *Evans v. State*, 574 P.2d 24, 26 (Alaska 1978); *Houston v. State*, 648 P.2d 1024, 1027 (Alaska App. 1982).

[7] *Smith v. State*, 691 P.2d 293, 295 (Alaska App. 1984).

prospects for rehabilitation. We conclude that the judge provided adequate insight into his basis for the sentence.

Lastly, Macauley appeals the duration of his sentence as excessive. But he recognizes that we lack jurisdiction over that claim, because his 60 days of unsuspended imprisonment falls short of the 121-day threshold for our jurisdiction over misdemeanor sentence appeals under AS 12.55.120(a) and Alaska Appellate Rule 215(a)(1). We accordingly refer his excessive sentence claim to the Alaska Supreme Court for discretionary review pursuant to AS 12.55.120(e) and Alaska Appellate Rule 215(k).

Conclusion

We AFFIRM the judgment of the district court, with the exception that we refer Macauley's excessive sentence claim to the Alaska Supreme Court for discretionary review.